

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JOSEPH F. HUTCHISON, et al.,</b>	)	<b>Case No. 1:01-789</b>
	)	
<b>Plaintiffs,</b>	)	<b>(Judge Beckwith)</b>
	)	
<b>-v-</b>	)	<b>(Magistrate Judge Hogan)</b>
	)	
<b>FIFTH THIRD BANCORP,</b>	)	<b>DEFENDANT FIFTH THIRD’S</b>
	)	<b>RESPONSE TO PLAINTIFFS’</b>
<b>Defendant.</b>	)	<b>MOTION FOR LEAVE TO FILE A</b>
	)	<b>REBUTTAL MEMORANDUM RE:</b>
	)	<b>ATTORNEY FEES AND COSTS</b>
	)	

Defendant, Fifth Third Bancorp (“Fifth Third”) hereby offers this response in opposition to Plaintiffs’ Motion for Leave to File a Rebuttal Memorandum with regard to Fifth Third’s Motion for Attorneys’ Fees and Costs.

Briefing on the Motion for Attorneys’ Fees and Costs is closed, and Plaintiffs offer no reason why the Court should permit them to file a 28-page Rebuttal Memorandum at this time. On this basis alone, the Court should deny the Motion for Leave. Moreover, because the proposed Rebuttal Memorandum merely repeats the arguments and serious misstatements of fact and law previously made, there simply is no reason for the Court to consider the Rebuttal Memorandum. Indeed, that Plaintiffs want to file yet another brief on the merits of this litigation – which merits and facts already have been decided by this Court and by the Sixth Circuit Court of Appeals – underscores Fifth Third’s position in support of its Motion for Attorneys’ Fees and Costs: it is Plaintiffs’ own extreme over-litigation of the issues that has caused Fifth Third to incur excessive fees and costs. Fifth Third respectfully requests that the Court deny the Motion for Leave and finally bring a close to the excessive briefing in this matter.

If the Court grants the Motion for Leave, however, and considers the Rebuttal Memorandum, Fifth Third respectfully requests that the Court permit Fifth Third to file a substantive response to the Rebuttal Memorandum.

Respectfully submitted,

/s/ Sue A. Erhart

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#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing DEFENDANT FIFTH THIRD'S RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A REBUTTAL MEMORANDUM RE: ATTORNEY FEES AND COSTS was served upon counsel of record via the Court's electronic docket, this 27th day of August, 2007.

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Sue A. Erhart